

No. 91-1353

Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

**On Writ of Certiorari to the
Supreme Judicial Court of Maine**

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES**I. District Court for the Northern District of Washington County, Maine**

1. 11/30/87 - Complaint filed in *Conroy v. Aniskoff and Town of Danforth*, No. 87-CV-106.
2. 12/4/87 - Defendant Town of Danforth's answer filed.
3. 1/4/88 - Defendant Aniskoff's answer, counter-claim and cross-claim filed.

II. Superior Court for Washington County, Maine

1. 1/8/88 - *Conroy v. Aniskoff and Town of Danforth* (No. 87-CV-106) removed from Fourth District Court-Division of Northern Washington (docketed as No. CV-88-04).
 - Plaintiff's reply to defendant Aniskoff's counter-claim filed (No. CV-88-04).
2. 7/15/88 - Complaint filed in *Conroy v. H.C. Haynes, Inc.*, No. CV-88-78.
3. 7/18/88 - Defendant H.C. Haynes, Inc.'s answer and affirmative defense filed (No. CV-88-78).
4. 10/4/88 - Plaintiff's motion to amend complaint filed (No. CV-88-01).
5. 10/13/88 - Plaintiff's motion to amend complaint filed (No. CV-88-78).
6. 10/18/88 - Defendant H.C. Haynes, Inc.'s answer to amended complaint filed (No. CV-88-78).
7. 10/19/88 - Plaintiff's amended complaint ordered filed (No. CV-88-78).

- 8. 10/25/88 - Plaintiff's motion to amend complaint and amended complaint filed (No. CV-88-04).
- 9. 12/30/88 - Plaintiff's motion to consolidate filed.
- 10. 1/18/89 - Cases consolidated (No. CV-88-04 - CV-88-78).
- 11. 9/26/90 - Non-jury trial.
- 12. 11/8/90 - Decision and order filed.

III. Supreme Judicial Court of Maine

- 1. 12/3/90 - Notice of appeal filed.
- 2. 12/19/90 - Order of remand filed.

IV. Superior Court for Washington County, Maine

- 1. 2/14/91 - Stipulation filed.
- 2. 2/19/91 - Stipulated order and judgment filed pursuant to remand.

V. Supreme Judicial Court of Maine

- 1. 2/27/91 - Notice of appeal filed.
- 2. 11/27/91 - Judgment affirmed by equally divided court.

VI. United States Supreme Court

- 1. 2/20/92 - Petition for a writ of certiorari filed.
- 2. 6/22/92 - Petition for a writ of certiorari granted.

TRANSCRIPT EXCERPTS

September 26, 1990

[15] THOMAS F. CONROY, called on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

- Q Would you state your name, please.
- A Thomas F. Conroy.
- Q Where do you live, sir?
- A Current duty, I'm stationed in Madison, Wisconsin, at 961 Derby Drive, in Sun Prairie, Wisconsin.
- Q Where is your home?
- A I'm a native of Maine. I was born in Portland, and I was raised in South Portland.
- Q You graduated from schools in that area?
- A I attended -- I said I grew up in South Portland, I attended the local schools, high school, and I attended the University of Connecticut.
- Q And from the University of Connecticut you obtained a commission in the Army?
- A That's correct, yes.
- Q Did you then enter on active duty with the United States Army?
- A I did in 1962.
- Q Do you recall when in 1962?
- A February of 1962.
- Q And for how long did you stay on active duty with the [16] United States Army?
- A At that -- during that period, I remained in active duty until July of 1964, then I voluntarily separated from the

active service, remained out of the Army for approximately two years, two and a half years, and reentered the Army in November of 1966.

Q And since November of 1966, have you been on continuous active duty with the United States Army?

A Yes, I have.

Q And are you still on active duty with the United States Army?

A Yes.

Q Has there been any break in that active duty since November of 1966?

A No, there has not.

MR. ANDERSON: May I have plaintiff's one, your Honor, please.

BY MR. ANDERSON:

Q I'm going to show you what has already been admitted as plaintiff's exhibit one, and it's been agreed that this is the deed pursuant to which you took title. Would you just take a moment to look at that and tell us if you agree that that is so.

A Yes, it is, yes. This is the warranty deed that I received when my family and I purchased the property in [17] 1973.

MR. ANDERSON: May I have the maps, please, your Honor.

BY MR. ANDERSON:

Q And looking at plaintiff's exhibit number three, which has already been admitted, would you simply hold it up so that his Honor can see, and point to the two lots we're talking about.

A Well, this is a sketch, depiction here of the area of Danforth and the lots that I owned. My name is here on lot six, but it is appraised of lot five and six, essentially, as a total -- total area that I purchased (indicating).

Q And that portrays the land which you acquired under plaintiff's exhibit one?

A That's correct, yes.

Q Now, Colonel Conroy, is that correct, you're serving currently in the rank of colonel?

A Yes.

Q When you acquired this property, what was your rank?

A I was a captain.

Q Do you remember if you paid taxes on this property for a period of time?

A I paid taxes on this property for 10 years without problems, yes.

[18]Q And did you move around, change duty stations while you owned this property?

A Yes, for -- well, as an example, for the 20 years -- we'll say the years that are encompassed by this timeframe, from '73 to '86, I had nine different major reassignments and relocations throughout the United States, Europe, and Far East.

Q And when did you last receive a bill for taxes on this property and pay them?

A Last time I received the bill was at Fort Devens, Massachusetts, which was my last and only address before moving to reassignment to Europe. I was located at Fort Devens on assignment, and my address was 69 Elm Street, that bill I received then was my 1983 tax bill.

Q Where did you go from Fort Devens?

A From Fort Devens we were reassigned to Rome, Italy, where we spend approximately seven, seven and a half months. And then we were reassigned from there to the Netherlands.

Q From the Netherlands you returned to your current assignment?

- A From the Netherlands we were reassigned to Madison, Wisconsin.
- Q Since you've owned this property, how often have you returned to the State of Maine?
- [19]A Since owning the property, it's very difficult to -- to put a definite number on that. We return whenever the situation permitted us to. I can't say that we returned once every three years, whatever, but I would say perhaps as a ballpark figure, we were able to return for perhaps a week, 10 days, or something along those lines, for -- for a week or 10 days. As an example, prior to my shipment to Europe, after leaving Fort Devens, we were in South Portland area for seven days.
- Q Now, have you been on this land from time to time since you acquired it?
- A Yes, we have. My family and I have -- I have three sons and a daughter, we purchased this land, basically, to use as an entire family retreat. And at some point in time that would allow in my career, perhaps when I retired, to put a little cabin up there, use it as kind of a get away for the entire family. And so during the years, we wanted to spend sometime there, when the situation would permit, we did that on at least three, perhaps four occasions where we camped out on the land as a family.
- Q Do you recall when the last such occasion occurred?
- A I think that was -- I think it was in the '80, '81 timeframe.
- Q As this case has developed, you engaged, through me, a [20] forester, did you not, as an expert, Mr. Putnam?
- A Yes.
- Q Mr. Putnam?
- A Yes.
- Q And have you paid Mr. Putnam's fees?
- A Yes, I have.

- Q And you have paid my fees throughout the course of this litigation?
- A Yes, I have.
- Q And neither Mr. Putnam nor I represent you in any other matters; is that correct?
- A That's correct.
- MR. ANDERSON: I have no further questions.
- THE COURT: Mr. Sylvester for the town.

CROSS-EXAMINATION

BY MR. SYLVESTER:

- Q Colonel, you're a Maine native?
- A Yes, I am.
- Q And you're aware of the requirement to pay taxes when they are assessed?
- A Most definitely. I own a home in South Portland and I pay taxes on that home for the years that I have owned it, since 1964.
- Q So you still own that home in South Portland?
- A We have a home in South Portland, yes.
- [21]Q And you did for at least 10 years during your active duty service receive the tax bills and the mailings from the Town of Danforth; is that correct?
- A That's correct, we received those at the various stations where we were assigned.
- Q And they would come in some sort of an envelope like that, (indicating), tax collector, Town of Danforth?
- MR. ANDERSON: Your, Honor, I object to this line of questioning. I'm not sure that that is at all relevant. The particular section of the Soldier and Sailor Civil Relief Act that we're operating under makes no reference to notices, its protection is absolute.

THE COURT: You may be very well correct, Mr. Anderson. There is no jury here, I'm going to allow it and I will make a ruling, obviously, before concluding what the ultimate disposition in this matter is, whether or not the Act applies, that seems to be the issue, if it applies, and I agree it's not relevant, if it doesn't apply, then it is relevant, and I will allow it. All right.

MR. SYLVESTER: Thank you, your Honor.

BY MR. SYLVESTER:

Q So on a regular basis you were receiving tax notices from the Town of Danforth while you were on active duty; is that true?

[22]A For 10 years we received --

2Q For 10 years. And during each of those years, when you got the notice from the town, you promptly and correctly paid your taxes?

A Yes, no question.

Q No question about that?

A No.

Q All of a sudden in 1983 -- you were in Fort Devens, Mass.; is that true?

A That's correct, yes.

Q And I believe you just testified that you did get your '83 notice before you relocated to Europe?

A That's correct.

Q Did you pay your '83 taxes?

A Yes.

Q Are you -- do you have proof of that, sir?

A Do I have proof of payment?

Q That you paid the '83 taxes?

A Yes, I'm quite sure I do, in my records I have them --

* * *

[23]

* * *

Q When you get an opportunity, possibly you could just provide us with that. You were aware of the requirement, were you not, Colonel, to notify a taxing authority, such as the town, of your change of address?

MR. ANDERSON: Excuse me, Mr. Sylvester, before he answers that, I am pleased to provide you with that document now, if you like.

MR. SYLVESTER: Thank you.

Q You were aware --

A Can I jump back to that '83 tax --

Q Yes, please.

A I did pay those '83 taxes, and I did pay them from my last known address in the United States, which was at 69 Elm Street, Fort Devens, Massachusetts. You can see by the check there, my address is stenciled on that check --

Q Yes, sir.

A -- as the then current address. I want to make sure that that's understood, but we did make that payment [24] from my last known address in the States.

Q Fine. And when were you relocated to Europe, sir?

A We relocated to Europe in I'll say December of '85, January of '86. We actually made the move, we cleared the installation at Fort Devens during the last month of 1985.

Q Yes, sir. Other than the property in South Portland and the property in Danforth, did you own any other real estate in the State of Maine?

A No, we --

Q Again --

A Not in the State of Maine, no, we have our home out here in Wisconsin, of course, we pay taxes --

Q I'm referring to the State of Maine, and again I apologize if I didn't clear that up on the timeframe, that would be like between '83 and '86. So during that timeframe, you owned only two parcels in the State of Maine?

A Yes.

Q Fine. And you were aware of your requirement to pay the taxes on both of those parcels?

A No question, yes.

Q And I presume that the parcels in Danforth, as you have just testified, was fairly important to you and your family as a retreat?

[25]A Yes.

Q And you were aware that if you didn't pay your taxes for a period of time that the town, if it wished, if it so chose, any town, could initiate proceedings to take the property for the nonpayment of taxes?

A Well, I wouldn't admit to saying that I was aware of that, you know, I -- I certainly was aware of some of the problems that will ensue if someone doesn't pay the taxes, but did I perceive that Danforth would take this property and sell it under the circumstances that then prevailed, absolutely not. It was inconceivable to me what occurred did actually occur.

Q Did you keep good records like with your checkbooks and your own personal items, Colonel?

A I think so.

Q And when you didn't receive the tax bills on this very important parcel of land in Danforth, did that not trigger in your mind something, like, gee, I should be paying my taxes this year?

A There is no question, yes, it did trigger in my mind that I should be paying taxes, but, you know, and we had done everything, or I had done everything and operated under standard procedure of notifying Danforth of our whereabouts. There are certain things a military

serviceman or woman must do as standard [26] procedure when they receive official notice for relocation. I, of course, have to counsel my men on doing that, so I certainly do it myself. And we -- those procedures are basically to make our change of address in your unit of assignment with your postal clerk, to go to the local servicing postal facility, be it either on the installation or the local community, put -- submit a change of address card there as well, and thirdly and lastly is to inform all of those folks that you do business with, periodicals or correspondence of any kind, you send them a change -- basically a change of address. Now, did I do those things, yes, there is no question that I did those things. And I have done those things ever since we were in the military. And I can only say that a service person cannot survive -- cannot conduct a daily business of life without doing those things because of the constant relocations and reassignments.

A I understand that, Colonel, thank you. Now, when you did relocate, you say -- your testimony is that you believe that you sent out a change of address card to the Town of Danforth. Let me ask you this, when you didn't receive your tax bills for three years in a row, did you write or call, by a letter, not just a change of address card, the Town of Danforth to say this land [27] that I prize so dearly, I have not received a tax bill on, nor have I paid taxes in three years; did you do that?

A Yes, we sent notice to Danforth, but again, I have to go back to 1983 and look at this thing as -- in total context. 1983 I last paid my taxes, I was at my last known address, then, in the United States. That was at Fort Devens. I paid those taxes at that time. Of course, I moved from my previous address, which was West Dover Air Force Base, the previous year, and that's where Danforth continued to send, apparently, all of these letters on notification, or registered mail, and so forth, which is absolutely puzzling to me because they

received my change of address, I had not received it back as not being able to be delivered. And again, I, of course, I paid my taxes in '83, from -- from Fort Devens.

Q I understand that, Colonel --

A So when we did not receive a tax bill in '84, this was -- we had to go another year now, '83 I paid, then I went to '84, summer or fall of '84. I have to say that for a good part of that year I was out of the United States, I was in Beirut, Lebanon, and I was spending most of my time then there, but I do recall returning from Beirut in the fall of '84 and asking the [28] wife -- we had talked about this here as part of my coming to trial, to go over this to be sure we were correct, if she had received the bill from Danforth, and I was puzzled why we hadn't received a bill.

Q Let me just interrupt you, if I may, please, Colonel, at this point --

A Yes.

Q Which is apparently crucial, did you then write a letter to the Town of Danforth saying where is my tax bill?

A As I just mentioned, this was in the fall of '84, I jotted off a note to Danforth, my recollection, early '85, something along the lines saying look, I haven't received my tax bill, would you please send it for '84.

Q Do you have a copy of that letter?

A I do not have a copy of that letter. Simply a very, very inconspicuous note.

Q Do you have any copies of any letters that you may have written to Danforth, other than a note you say that you may have jotted off, asking them for a tax bill or telling them you hadn't received one or paid any?

A No, I don't think so. Other than my -- my final response letter to Danforth, when I received notice from them that

they had taken my property and sold it. [29] This was when I was in Holland.

Q You apparently received that notice?

A I beg your pardon?

Q You received that notice?

A I received a reply to that final letter, but it was after the property had already been sold. That was puzzling to me.

Q Now, what is the time that it takes mail on average to get, using an Army post office, or APO address, from the States, mailed through APO, New York to wherever you were in Europe -- to you in Europe?

A It varied, it went from seven to 10 days.

Q Seven to 10 days. So it wasn't -- isn't months or weeks, we're just talking a few -- very few days; aren't we, Colonel?

A Yes.

Q You had no structure on that property, nothing was built on the property that you had purchased?

A No, we had not put anything on that property.

Q And again, I'm referring to '83 to '86 timeframe.

A I'm sorry, what timeframe?

Q '83 to '86, there was no structure there?

A No.

Q Are you aware that the only letter that the town received from you regarding these taxes prior to the [30] sale was sometime in late '86?

MR. ANDERSON: I object to that, your Honor, there is no --

THE COURT: If he knows.

BY MR. SYLVESTER:

Q If you know, even though --

THE COURT: Do you have personal knowledge?

- A Would you repeat that question, please?
- Q Did you respond -- you responded to a letter that you received from the town, and that was approximately either late '86 or early '87?
- A That was in '87.
- Q That was when you responded?
- A That was when the town -- the then town manager provided me with a letter indicating that they had taken my property for tax delinquency and sold it. That's the letter that I received.
- Q So we have a three-year period that you -- you neither received a tax bill nor paid taxes, and I believe that would be '84, '85, and '86, if you are correct that you did pay the '83 taxes?
- A Yes.
- Q Colonel, did you write the original letter in this exchange of correspondence in January '87 to the town and they replied to you; is that the way it went?
- [31]A I think perhaps that was the way it was, yes.

MR. SYLVESTER: Thank you, nothing further.

MR. ANDERSON: Your Honor, I wish to renew my objection by moving to strike all testimony pertaining to notification to the Town of Danforth or correspondence between plaintiff and Town of Danforth.

THE COURT: Again, the Court is going to allow the evidence de bene, and obviously, the ultimate ruling by the Court may exclude it, all right, as being not relevant.

On behalf of H.C. Haynes, Mr. Cuddy.

MR. CUDDY: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. CUDDY:

- Q Colonel Conroy, as I understood your discussions with Mr. Anderson, you and your family acquired this property, and were basically holding onto it during the period between 1983 and '86; that is, you weren't doing anything with it?
- A Well, we acquired it in 1973.
- Q Right, but the period that we're concerned with -- that I'm concerned with is between 1983 and '86--
- A Yes.
- Q -- and at that time you were just basically holding onto it; is that correct?
- [32]A Yes, that's correct.
- Q You had no dwelling place on the property?
- A Our intention, of course, at some point in time was to put up a log cabin there or something. We never had the opportunity of doing that, so we didn't have a permanent dwelling on that property.
- Q At that time, there was no dwelling on the property; is that correct?
- A Yes, it's correct.
- Q And is it also correct you weren't using that property for any kind of professional or business purpose?
- A No, we --
- Q At that time?
- A No, we weren't using it for any kind of professional -- as I indicated, we simply used it for recreational use and that was our main objective.
- Q You weren't using it for any kind of agricultural purposes, were you?
- A No, I had not used it for any kind of agricultural purposes.

- Q Your status is still that of an Army officer, sir?
- A Yes, that's true.
- Q You're a career officer, as such?
- A Yes.
- Q And that was your status as well during this period of [33] time from '83 to '86?
- A Yes.

MR. CUDDY: I have no further questions.

THE COURT: Mr. Mitchell for Mr. Aniskoff.

CROSS-EXAMINATION

BY MR. MITCHELL:

- Q You have already testified, it is my understanding, that you reenlisted in 1966, you had been in the service in '62?
- A Well, reenlisted officer, but essentially what you're saying is correct, I reentered the service as a commissioned officer in 1966, November, after I -- about two and a half year period as a civilian.
- Q Okay. You weren't drafted?
- A No.
- Q In '66 you were a volunteer. An in '66, '67, you -- '67 you were in Vietnam, I understand?
- A '67, '68 in Vietnam, yes.
- Q '68, nine, '70, '71, you were in Georgia and Massachusetts, that's when you purchased the property?
- A That's correct, we were then assigned in 1973, when I purchased the property, we were assigned to Massachusetts at Fort Devens, yes.
- Q You received tax bills the year after that?
- A Yes.
- [34]A And '74 would be the same?

- A '75, '76 -- '74, '75, we were reassigned from Fort Devens to Fort Levinworth, Kansas, in '75 we were -- received our bills. They responded to the change of address notices that I gave them during that period, and I received my bills.
- Q You paid them?
- A As normal.
- Q And paid the taxes?
- A Yes, and I paid taxes during that time.
- Q '76, '77 you were in Korea?
- A '76, '77 I was in the Republic of Korea.
- Q You received bills and paid them?
- A In '76 and '77 there was some question about the bill, for that period of time, and I then inquired of the town regarding that bill, but I have to say that that was another incident that I did not receive a reply from the town.
- Q You paid your taxes, you didn't lose --
- A I wanted confirmation, I was in the Republic of Korea, I asked my wife upon my return had she paid the taxes to South Portland and Danforth, and she thought that she had, but after -- I have to explain this. We -- our records, our financial records were for various reasons I can't really go into located in South Portland. And [35] at that time we were back at Fort Devens when I asked this question to my wife. She could not be certain of whether we paid those, or she paid those taxes.
- Q You did ask her the question, however?
- A Yes. And I think I -- to my knowledge, I got off a note to Danforth at that time, wanted -- asking for confirmation that those taxes were paid for that one year. And I did not receive a reply from Danforth then.
- Q And you didn't hear anymore from them so --

A No, I assumed it wasn't a problem, so I just continued to pay my taxes and respond to my bills when I received them each year thereafter.

Q But in that year, you say there was some question so you asked your wife if you -- if those taxes had been paid?

A Yes, she -- after -- I had to ask the wife, that's standard when I'm out of the country, I don't --

Q I don't know what your wife knew, you asked your -- you yourself asked your wife if the taxes were paid?

A Yes, I did.

MR. ANDERSON: Your Honor, I object to this line of questioning as being irrelevant.

THE COURT: It's already been testified --

Q THE WITNESS: I have to --

THE COURT: Just a moment, sir, again, we're all talking together. For the record, the question has been [36] previously asked, it's cross-examination, and I'm going to allow it, so why don't you restate the question so there is no mixup on the record.

BY MR. MITCHELL:

Q You didn't lose your property in 1976 to the Town of Danforth or Portland for nonpayment of taxes?

A Not to the Town of Danforth, no, I didn't.

Q And '77, '78, '79, you received more bills?

A That's true, yes.

Q Did you pay your taxes in Portland, I believe you testified yes in '83, '84 and '85?

A In South Portland?

Q South Portland?

A Yes.

MR. MITCHELL: I have no further questions.

THE COURT: Mr. Anderson, any redirect?

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Colonel Conroy, I'm going to show you what's been marked plaintiff's exhibit eight; do you recognize that?

A Yes, this is the check that was used at -- a copy of the check that was used when I paid the taxes in 1983 from Fort Devens, Massachusetts.

Q And is that a copy of the check that Mr. Sylvester asked you to prove when he was crossing you?

[37]A Yes.

Q To produce, rather?

A Yes, it is.

MR. ANDERSON: Would offer plaintiff's eight, your Honor.

MR. SYLVESTER: No objection.

THE COURT: Mr. Cuddy?

MR. CUDDY: No objection.

THE COURT: Mr. Mitchell?

MR. MITCHELL: No objection.

THE COURT: It's admitted.

MR. ANDERSON: Nothing further.

THE COURT: All right. No recross by any of the parties? You may step down, thank you, sir.

(At this time, the witness stepped down from the witness stand.)

[59]

HERBERT C. HAYNES, called on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

[60] DIRECTION EXAMINATION

BY MR. ANDERSON:

Q Would you state your name? Would you state your name, please, sir?

A Herbert C. Haynes.

Q And Mr. Haynes, what is your capacity with H.C. Haynes Incorporated?

A President of H.C. Haynes Incorporated.

Q And how long have you been in that capacity?

A Since 1963.

Q And Mr. Haynes, you're aware that today we're talking about a parcel of land in the Town of Danforth which H.C. Haynes Incorporated acquired from the Town of Danforth in late 1986; are you not?

A Right.

Q And you understood that to be tax acquired property which H.C. Haynes Incorporated was buying?

A Yes, I did.

Q Now, when did you first become aware that a man named Thomas Conroy had some interest in that land?

A When I received the letter in April.

THE COURT: Which April, April of '87, '88?

THE WITNESS: April of '87.

MR. EUGENE PUTNAM: Excuse me, this exhibit —

THE COURT: Just a moment. He will go over and talk [61] to you, because you're talking, she has to write it down. I don't want her to do that. All right.

(Pause.)

BY MR. ANDERSON:

Q Did you have an opportunity to finish your answer, sir?

A Yes.

Q There was a little confusion there. And you say that so far as you knew in April of 1987, you understood there was no problem with H.C. Haynes' claim to that land?

A Well, I contacted my lawyer, James Carr, and he wrote me one or two letters in reference to the land.

Q And the first letter you received from Mr. Carr, I believe, is what has been marked plaintiff's exhibit five, which I am handing to you; is that correct?

A Right.

Q Now, in plaintiff's exhibit five, Mr. Carr indicates to you that an individual who he refers to as the recent owner still has some right, that there is still some defect in the title of that land; does he not?

A Right.

Q And I'm now going to hand you plaintiff's exhibit six, and I believe you have identified that as a letter you received in April, which puts you on notice as to the name of that particular individual as Thomas Conroy?

[62]A Correct.

Q And as a result of the receipt of plaintiff's exhibit six, what did you do?

A I got in touch with Mr. Carr, sent him a copy of that letter, I think.

Q And did you then receive back from Mr. Carr plaintiff's exhibit seven, offering you further advice on that property?

A Right. Yes, I did.

Q And in plaintiff's exhibit seven, Mr. Carr emphasized his earlier statement in December of '86, that that previous owner of the land, a man named Thomas Conroy, had a claim to it; did he not?

A That's what the letter said.

Q Now, did you obtain permission from Mr. Conroy to do any cutting on that land?

- A No, I did not.
- Q And that was true at any time, correct?
- A That's right.
- Q And when I say you, I'm talking about you in your capacity as president of H.C. Haynes.
- A That is right.
- Q To your knowledge, did H.C. Haynes Incorporated receive permission in anyway from Mr. Conroy to cut on that land?
- [63]A Not to my knowledge.
- Q And H.C. Haynes Incorporated still claims ownership to that land; does it not?
- A That is right.
- Q Did you make any effort to get in touch with Mr. Conroy?
- A No, I did not.
- Q What did you do concerning -- when I say you, I'm talking about H.C. Haynes Incorporated, concerning this particular piece of property?
- A I got in touch with Mr. Carr.
- Q Did you at some point enter on the land through H.C. Haynes Incorporated and commence timber cutting operations?
- A Yes, that very -- after we received a deed from the town.
- Q And you continued to carry on those timber cutting operations despite knowledge that a man named Conroy was asserting a claim to that land and objected to your cutting; did you not?
- A I continued to cut the property until I got the wood all cut.
- Q When was the last wood cut on that particular piece of property?
- A Sometime in June or July of '87.

- Q Now, did you make the decision that H.C. Haynes [64] Incorporated should go out and do this cutting on this particular piece of lot -- particular piece of land, rather?
- A I don't -- you mean did I make the decision that we were going to cut?
- Q Yes.
- A I, along with the people that work for me at my company.
- Q Well, this was not an accidental cutting, this was an intentional act of going onto this land and cutting this wood; was it not?
- A No, when you have a deed to a piece of property, you feel you can treat it as your own.
- Q So the answer is yes?
- A That's right.
- Q It was intentionally cut. Did you actually go on that piece of land while the wood was being cut?
- A No, I did not.
- Q Did you at any point inspect the work that was being done?
- A You mean in the woods?
- Q Yes.
- A No, I did not.
- Q And throughout the time that the cutting was being conducted by H.C. Haynes Incorporated, you as the [65] president of the corporation were aware that the cutting was going on?
- A Yes, I was not on the land, but one of my foresters should have been on the land.
- Q And do you know when the wood was first removed from the land?
- A I think that the slips say around the middle of May of 1987.

Q You heard Mr. Putnam testify that the first wood in his opinion was carried away from that land on May 17th, 1987?

A Right.

Q Do you agree with that?

A I would agree with that.

Q And that was after you were put on notice that Thomas Conroy was asserting title to that land and objected to the cutting of timber on it; was it not?

A I understand that.

Q And do you agree with Mr. Putnam's valuation of the values of the wood that was harvested on that land?

A Yes, I do.

Q And that was — those records which your company gave to Mr. Putnam were accurate representations of that harvest; were they not?

A That is right.

[66] Q How long have you been in the lumber business, timber harvesting business?

A Oh, probably around 40 years.

Q So that would take us back to 1950?

A Yes.

Q And during that period of time, you have through your company or personally acquired many parcels of land; have you not?

MR. CUDDY: I'm going to object to the relevancy of this.

THE COURT: I assume he's using it for background. Again, I don't see the relevancy. You're laying a foundation for something, give me an offer.

MR. ANDERSON: Yes, I'm laying the foundation for something, if I may be permitted.

THE COURT: All right, proceed. And press your objection at the appropriate time.

BY MR. ANDERSON:

Q You acquired many parcels of land during that 40 years; have you not?

A I have acquired some parcels of land during the 40 years.

Q How many acres does H.C. Haynes Incorporated own; if you know?

A I do not know.

[67] MR. CUDDY: I'm pressing my objection.

THE COURT: His answer is no. Again, I don't see the relevancy. I'm allowing it for background, as something I'm assuming you're going to connect to something.

BY MR. ANDERSON:

Q Do you understand the various kinds of deed by which property is transferred in Maine?

A Yes, I do.

Q What's your understanding of the types of deeds?

A Well, warranty deed is person you get it from warranties that the title is good.

THE COURT: Well, just a moment. He's pressing his objection, you can ask him if he knows there are different kinds of deeds. What a warranty deed and quit claim deed is, that's a matter of law, and —

MR. ANDERSON: My point is, your Honor, what I'm leading up to, this is a man who is sophisticated in the acquisition of real estate. He has testified previously at his deposition that he had never, despite many acquisitions, and despite his understanding, had a situation arise in which the Soldiers and Sailors Civil Relief Act was brought to his attention. And despite his sophistication and despite the uniqueness of this situation, he continued to harvest timber through his [68] company

on that land, and well after notification, caused all of that timber to be carried away.

MR. CUDDY: I think that's a matter of argument. For foundation questions, that have already been asked, I don't see what further inquiry on this line is relevant.

THE COURT: I think basically what you're suggesting Mr. Anderson, is that you intend to ask him the question if he knew the effect of the Soldiers and Sailors Relief Act —

MR. ANDERSON: No.

MR. CUDDY: I have no objection to that question.

MR. ANDERSON: No, I don't intend to ask him that question. If it is not true that this was the first time that had been brought to his attention, and that was a unique circumstance, which should have —

THE COURT: Why don't you ask him that question, and I'm sure Mr. Cuddy has no objection, as I understand it, if this is the first time he came in contact with the Soldiers and Sailors Relief Act in reference to title to land; is that your question?

MR. ANDERSON: It is.

THE COURT: All right, ask him. Did you understand what I just said?

THE WITNESS: Yes, I did.

[69]BY MR. ANDERSON:

Q Is that true?

A Yes, it is.

Q And despite that fact, you saw nothing unusual about this transaction?

A No.

Q You were not familiar with that Act, were you?

A No.

Q So would it be fair to say, Mr. Haynes, that despite Mr. Carr's warning that the previous owner had rights in this land, and despite the notice that was given to your company, which you were personally aware of, and despite Mr. Carr's subsequent advice identifying the person who had that claim, you still went ahead and caused this cutting and harvesting and carrying away of the timber to go on; is that fair?

A I would say so, yes.

MR. ANDERSON: Nothing further.

THE COURT: I'm assuming, just to keep the order, you have no questions, Mr. Sylvester?

MR. SYLVESTER: None, your Honor.

MR. MITCHELL: None, your Honor.

MR. CUDDY: I do.

CROSS-EXAMINATION

BY MR. CUDDY:

[70]Q Mr. Haynes, if you would look at plaintiff's exhibit number five, '86 letter, I believe, is that the 1986 letter from Mr. Carr to you?

A Yes, December 18th.

Q Now, perhaps I was mistaken or maybe Mr. Anderson is mistaken, but when you read the first paragraph of that letter back in 1986, did you in any way understand that the prior owner to this land, that is, the owner before the Town of Danforth, was in the military?

MR. ANDERSON: Objection, your Honor, that's leading.

THE COURT: It is leading, but it's — I don't know, in view of what's happened up to here, he can answer. I'm going to allow him to answer.

MR. CUDDY: And if I may, your Honor, I think my status right now is of crossing a gentleman that he called.

THE COURT: That isn't your status, he has a right to call your client and he can cross-examine your client. My understanding of civil, you're not allowed -- this is not a cross-examination, this is direct examination, but I'm going to allow the question in any event. But you should -- this is direct and not cross, all right. It's your client.

MR. CUDDY: I understand who it is, your Honor. I [71] do not agree, but I understand the Court's ruling.

BY MR. CUDDY:

Q In any event, Mr. Haynes, my question to you is, when you got this letter in 1986, did you understand from reading that first paragraph that the owner prior to the Town of Danforth was in the military?

A No.

Q As a matter of fact, did you understand before you got Mr. Anderson's letter in April of 1987 that the prior owner who claims some kind of interest in this land was in the military?

A No, I did not know that.

Q Do I understand you correctly that H.C. Haynes was cutting wood on this lot in the winter of 1986 and then into the spring of '87?

A I'm not sure about cutting in December of '86, but I know we started cutting in January or February of '87 and continued on cutting through the spring of '87 until we had it finished up in the early part of the summer.

* * *

[94]

* * *

WALTER ANISKOFF JR., called on behalf of defendant Aniskoff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Now that you have been sworn, would you state your name once again for the record.

A Walter Aniskoff Junior.

Q And where do you live, Mr. Aniskoff?

A 422 Poquonock, P-O-Q-U-O-N-O-C-K , Avenue, Windsor, Connecticut.

Q You're the owner of a piece of land in Danforth that we're discussing here in this case?

A Yes.

Q And you bought that under deed from the Town of Danforth on December the 22nd, 1986?

A Yes.

Q Well, the deed -- is that accurate?

A It was in December of '86.

Q Now, and what did you pay for that, by the way?

A 5500 and one dollar.

Q 5500 and one dollar?

A Yes.

Q And you gave a check to the town and you got a deed in [95] return?

A Yes.

Q Now, did you have any notice from anybody, the town or any source whatsoever, that there was any problem with that lot of land that you bought in December of 1986?

A No, I did not.

Q Had you ever heard of anybody named Thomas Conroy who was in the Armed Services who -- or anything of that nature prior to your buying that lot of land?

A No.

- Q Now, you have paid taxes on this lot of land since your purchase of it in 1986?
- A Yes.
- Q And how much are those taxes?
- A They run about — they started running about \$40 and are up to \$50 now.
- Q Okay. \$45 per year?
- A Yes.
- Q And you have paid those and they are current?
- A Yes.
- Q You used the property or are in possession of it as we speak until some further order of the Court, you own it and treat it as your own right now, and have since 1986?
- A Yes, I have.
- [96] MR. MITCHELL: I have no further questions.
MR. SYLVESTER: No questions, your Honor.
MR. CUDDY: Just one question.

CROSS-EXAMINATION

BY MR. CUDDY:

- Q I'm not sure if I heard you correctly, your current taxes on the lot in question are \$50 a year?
- A They run — they started running \$40, and it's up to \$50 right now.
- MR. CUDDY: I have nothing further, thank you.

* * *

[100]

* * *

HERBERT C. HAYNES, recalled on behalf of plaintiff in rebuttal, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

- Q Now, Mr. Haynes, without going into the formalities of identifying it, you know the lot we're talking about when we're talking about the lot on which we're having this fight, right?
- A Um-hum.
- Q Did you regard that lot as the Conroy or as the H.C. Haynes lot in Danforth?
- A The Conroy lot, you're asking me?
- Q Did you label it the Conroy lot?
- A We would be labeling at the office probably as the Conroy lot with it going through H.C. Haynes Incorporated. See, there is a gate ticket system that goes with these lots that accompanies these slips, and that's what identifies —
- Q So —
- A — the lots.
- Q So even though you thought Conroy had no interest in it, your records would call it the Conroy lot?
- [101]A The Conroy lot would have the gate ticket system — the gate ticket that belongs for it was the Conroy lot.
- MR. ANDERSON: Nothing further.
- THE COURT: Any of counsel for the other parties?
- MR. CUDDY: No, your Honor.
- MR. MITCHELL: No questions.
- MR. SYLVESTER: No, your Honor.

* * *

THOMAS F. CONROY, recalled on behalf of defendant Haynes in rebuttal, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CUDDY:

Q Mr. Conroy, you were present when Mr. Aniskoff testified?

A That's correct, yes.

Q And you -- and thinking back to your testimony, my [102] memory is that you got tax bills at least through 1983 from Danforth; is that correct?

A Yes.

Q And how much were you paying for taxes back at that time?

A It was approximately on both lots, north and south side of the Old Springfield Road, approximately \$140, I think, in that neighborhood.

Q For both lots?

A For both lots.

Q What was your rank back then?

A At what time?

Q '83.

A In '83, I was a major.

Q What was your pay back then in '83?

A I'm sorry, I was a lieutenant colonel in '83.

Q What was your pay back then as a lieutenant colonel?

A I don't know exactly.

Q I'm interested in approximately, sir, I don't expect you to have a precise --

A In '83, my base pay perhaps was somewhere around \$3000.

Q Your base pay was \$3000?

A Um-hmm.

Q Did you have any trouble paying this \$140 bill -- let me put it another -- there wasn't any difficulty or any [103] problem for you financially to pay this bill, was there?

A Well, it wasn't a problem to pay that bill, it wasn't a problem to pay any, it was, you know, it's always a problem to pay bills, I don't want you to infer it isn't for anybody. Everybody has bills, and I'm not unique in that regard. But I paid my bills and that bill was included among all of them.

Q You're not claiming that you're unable to pay that bill, sir?

A Not at all, no.

MR. CUDDY: Nothing further.

MR. SYLVESTER: No questions.

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James D. Carr
Attorney at Law
Box 301
Houlton, Maine 04730

207-532-9506

December 18, 1986

Herbert C. Haynes
P.O. Box 96
Winn, Maine 04495

Re: Tax Map 6, Lots 5 & 6
(97 acres, Town of Danforth)

Dear Herb:

The title on the above captioned property you acquired from the town is clear as appears of record except for the most recent owner's right to challenge the tax acquired title. In order to clear that defect you would need a Release Deed from him or a Judgment quieting his title.

I also note that your deed from the town does not yet appear of record. Finally, I would mention that there never has been a very good legal description of the property; even the earliest deeds simply refer to the neighbors who occupy the neighboring land. Unless you want to rely upon the tax map, you might want to have a surveyor provide a more precise description at some point.

Very truly yours,

/s/Jim
James D. Carr

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 5

JDC/bg

35

April 23, 1987

H.C. Haynes, Inc.
Winn, Maine 04495

Gentlemen:

This firm represents COL Thomas Conroy concerning real estate owned by him in Danforth, Maine. I notice from the records in the Washington County Registry of Deeds that you received a Municipal Quitclaim Deed to a portion of this property from the town. A copy of that deed is enclosed.

The Soldiers and Sailors Civil Relief Act, 50 U.S.C. Appx. § 525 indicates that the period of service of a military person is not to be counted in calculating the time within which property can be redeemed from a tax taking. Since COL Conroy is still on active duty in the military, he is entitled to redeem the property. Title has not matured in the Town of Danforth and cannot mature during his service.

My purpose in contacting you is twofold. First, I urge you, or your legal representative, to contact me in order to discuss this problem. Second, if you are contemplating cutting, or are in the process of cutting, any timber on this property, I wish to place you on notice that this cutting is without the permission of the true owner of the property, Thomas Conroy.

Yours truly,

/s/ Peter A. Anderson
Peter A. Anderson

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 6

PAA/jac
Enc.
bcc: Joseph Conroy

Re: Tax Map 6 - Lot 5 & 6
Danforth

Dear Herb:

The Soliders and Sailors Relief Act provides that while serving in the armed forces the period of redemption for lands taken under the tax lien process is extended and the town may not sell the property without obtaining permission of the court.

The sale by the town to you is not void, but Col. Conroy has the right to redeem the property. Until that happens, you hold it under a color of title and can treat it as your own.

Even if Conroy had not been in the army you would have needed a release deed from him to obtain certifiable title since it was a tax tile the town conveyed to you.

You can let me know if you want to make an offer to Col. Conroy to obtain his interest which would then clear the title. If he redeems the property, you could proceed against the town to recover your purchase money.

Your truly yours,

James D. Carr

Plaintiff's Exhibit
CV-88-4 CV-88-78
No. 7

JDC/bg

SUPERIOR COURT
Civil Action
Docket No. CV-88-04-
CV-88-78

THOMAS F. CONROY,
Plaintiff

v.
WALTER ANISKOFF, JR.,
and THE INHABITANTS
OF THE TOWN OF
DANFORTH,
Defendants

and
THOMAS F. CONROY,
Plaintiff

v.
H.C. HAYNES, INC.
Defendant

STIPULATION

The parties, through their undersigned counsel, hereby stipulate and agree that the following "Amended" Judgment may be entered, subject to the approval of Justice Beaulieu:

"JUDGMENT: Consistent with the Order of Remand of the Supreme Judicial Court in this matter dated December 10, 1990, the Court hereby enters the following Amended Judgment: These matters having been heard without jury, the Court finds in favor of the Defendants in the matters CV-88-04 and CV-88-78 and enters judgment in favor of the Defendants and against the Plaintiff in each case. All pending cross-claims and counterclaims are hereby dismissed as are the Plaintiff's Complaints in each of the above-captioned actions."

Dated: 2/13/91

/s/ Peter A. Anderson
Peter A. Anderson, Esq.
202 Exchange Street, Suite 200

Bangor, Maine 04401
Counsel for Thomas Conroy

Dated: 1/31/91

/s/ Kevin M. Cuddy
Kevin M. Cuddy, Esq.
CUDDY & LANHAM
470 Evergreen Woods
Bangor, Maine 04401
Counsel for H.C. Haynes, Inc.

Dated: Feb. 5, 1991

/s/ John Mitchell
John Mitchell, Esq.
P.O. Box 367
Calais, ME 04619
Counsel for
Walter Aniskoff, Jr.

Dated: Feb. 1, 1991

/s/ Torrey Sylvester
Torrey Sylvester, Esq.
64 Main Street
Houlton, ME 04730
Counsel for the Inhabitants of the
Town of Danforth

ORDER

The above-stipulated Amended Judgment is hereby approved and the Clerk is directed to make an entry on the docket reflecting the filing of this Stipulation and a separate entry reflecting the above Amended Judgment.

Dated: 2/15/91

/s/ Eugene Beaulieu
Eugene Beaulieu, Justice

Filed and Entered 2/19/91

IN THE SUPREME COURT OF THE UNITED STATES

[Caption Omitted in Printing]

Order Granting Petition for Writ of Certiorari entered June 22, 1992.